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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
JASON PAUL KIRBY,  
  
Defendant and Appellant.

2d Crim. No. B270292  
(Super. Ct. No. 1472855)  
(Santa Barbara County)

Jason Paul Kirby appeals from the judgment entered after he pled no contest to possession of counterfeit currency (Pen. Code, § 475, subd. (a))<sup>1</sup> and was granted three years probation. Appellant committed the offense in December 2014, a month after Proposition 47 was enacted to make certain theft, forgery, and narcotics-related offenses misdemeanors unless the offenses are committed by certain ineligible defendants. (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Appellant contends, for the first time on appeal, that his felony conviction should be reduced to a misdemeanor pursuant to Proposition 47. We affirm.

*Procedural History*

On December 13, 2014, appellant was arrested for misdemeanor petty theft and receiving stolen property, i.e., a bicycle. When appellant was booked at county jail, he had \$680 in counterfeit U.S. currency on his person.

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<sup>1</sup> All statutory references are to the Penal Code.

On July 24, 2015, appellant pled no contest to the felony charge of possessing counterfeit currency. (§ 475, subd. (a); Case No. 1472855.) Pursuant to the negotiated plea, the prosecution dismissed the petty theft and receiving stolen property counts, and dismissed two other misdemeanor actions. (Case Nos. 1472456 and 1472426.) It was agreed that appellant would be sentenced to 180 days jail in two other misdemeanor cases. (Case Nos. 1474061 and 1475586.)

On November 20, 2015, the trial court denied appellant's *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118) and motion to withdraw the plea. At the December 16, 2015 sentencing hearing, the trial court suspended imposition of sentence and granted three years probation.

#### *Proposition 47*

Appellant contends that his conviction for possession of counterfeit currency should be reduced to a misdemeanor because Proposition 47 provides that possession of forged bank bills or notes of a value not exceeding \$950 is a "forgery" punishable as a misdemeanor. (See § 473, subd. (b).) In 2015, there were no published cases holding that possession of counterfeit currency (§ 475, subd. (a)) qualified as a Proposition 47 misdemeanor. In *People v. Maynarich* (2016) 248 Cal.App.4th 77, our colleagues in Division Five recently held that possession of counterfeit U.S. currency is the same as possession of a forged "bank bill" (§ 473, subd. (b)) for purposes of Proposition 47 sentencing. (*Id.*, at p. 79.) The court reasoned that Proposition 47 alters section 473, which sets forth the punishment for a variety of forgery offenses including section 475, subdivision (a) of which defendant was convicted. (*Id.*, at p. 80.)

*Maynarich* is a change in Proposition 47 case law and affects appellant's sentence. Proposition 47, however, requires that petitions for resentencing/redesignation of a felony conviction be filed and heard in the trial court that entered the judgment of conviction. (§1170.18, subs. (a) & (f).) There is nothing in the record to indicate that appellant filed such a petition or that his motion to withdraw the plea was based on Proposition 47. The fact that the trial court issued a certificate of probable cause does not expand the issues that may be raised on appeal. (*People v. DeVaughn* (1977) 18 Cal.3d

889, 895-896.) Appellant is precluded from filing a petition for resentencing until after the appeal is final. (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 929-930; *People v. Noyan* (2014) 232 Cal.App.4th 657, 672.)<sup>2</sup>

Appellant does not challenge the order denying his motion to withdraw his plea, the order denying his *Marsden* motion, the order granting probation, or any aspect of the negotiated plea other than the felony conviction itself. Appellant pled guilty to a felony in exchange for a favorable sentence and wants to add a new term to the plea bargain --- reduction of the felony conviction to a misdemeanor. Buyer's remorse is not grounds for vacating a plea or a conviction, particularly where the negotiated plea is a package deal that disposes of five cases. (*People v. Knight* (1987) 194 Cal.App.3d 337, 344.) Having received the fruits of the bargain, appellant "should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process. [Citations.]" (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANEGMAN, J.

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<sup>2</sup> The Attorney General argues that Proposition 47 relief (i.e., redesignation of a felony conviction to a misdemeanor) is not available to a defendant who is convicted of a felony committed *after* November 5, 2015, the effective date of Proposition 47. (See, e.g., *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1222 [section 1170.18 provides for reclassification of conviction for qualified offenders who suffered felony convictions *before the effective date of Proposition 47*].) We do not reach that issue.

Rick S. Brown, Judge  
Superior Court County of Santa Barbara

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Richard Lennon, Staff Attorney, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez,  
Ilana Herscovitz, Deputy Attorneys General, for Plaintiff and Respondent.